SENATE BILL No. 414

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-13.

Synopsis: EDGE credit applications. Provides that, in evaluating an application submitted after December 31, 2005, for an economic development for a growing economy (EDGE) tax credit, the EDGE board shall determine the extent to which the average compensation paid by the applicant to its employees exceeds the average compensation paid to employees working in the same industry sector in the county in which the applicant's project is or will be located. (Current law requires the board to determine the extent to which the average compensation exceeds the average compensation paid to all employees in the county.)

Effective: July 1, 2005.

Ford

January 13, 2005, read first time and referred to Committee on Economic Development and Technology.

Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 414

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.1-13-5.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5.3. As used in this chapter, "NAICS" refers to the North American Industry Classification System.**

SECTION 2. IC 6-3.1-13-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5.5. As used in this chapter, "NAICS industry sector" refers to industries that share the same first two (2) digits of the six (6) digit NAICS code assigned to industries in the NAICS Manual of the United States Office of Budget and Management.**

SECTION 3. IC 6-3.1-13-15.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15.5. This section applies to an application proposing to retain existing jobs in Indiana. After receipt of an application, the board may enter into an agreement with the applicant for a credit under this chapter if the board determines that all the following conditions exist:

(1) The applicant's project will retain existing jobs performed by the employees of the applicant in Indiana.

(2) The applicant provides evidence that there is at least one (1) other competing site outside Indiana that is being considered for the project or for the relocation of jobs.

(3) A disparity is identified, using the best available data, in the projected costs for the applicant's project in Indiana compared with the costs for the project in the competing site.

(4) The applicant is engaged in research and development, manufacturing, or business services, ~~(as defined in~~ **according to** the ~~Standard Industrial Classification~~ **NAICS** Manual of the United States Office of Management and Budget.

(5) The average compensation (including benefits) provided to the applicant's employees during the applicant's previous fiscal year exceeds:

(A) for an application submitted before January 1, 2006, the average compensation paid during that same period to all employees in the county in which the applicant's business is located by at least five percent (5%); **or**

(B) for an application submitted after December 31, 2005, the average compensation paid during that same period to all employees working in the same NAICS industry sector in the county in which the applicant's business is located by at least five percent (5%).

(6) The applicant employs at least two hundred (200) employees in Indiana.

(7) The applicant has prepared a plan for the use of the credits under this chapter for:

(A) investment in facility improvements or equipment and machinery upgrades, repairs, or retrofits; or

(B) other direct business related investments, including but not limited to training.

(8) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project, and not receiving the tax credit will increase the likelihood of the applicant reducing jobs in Indiana.

(9) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

(10) The applicant's business and project are economically sound and will benefit the people of Indiana by increasing or

maintaining opportunities for employment and strengthening the economy of Indiana.

(11) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed at least one dollar and fifty cents ($1.50) of local incentives with respect to the retention of jobs for every three dollars ($3) in credits provided under this chapter. For purposes of this subdivision, local incentives include, but are not limited to, cash grants, tax abatements, infrastructure improvements, investment in facility rehabilitation, construction, and training investments.

(12) The credit is not prohibited by section 16 of this chapter.

SECTION 4. IC 6-3.1-13-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. In determining the credit amount that should be awarded to an applicant under section 15 of this chapter that proposes a project to create jobs in Indiana, the board shall take into consideration the following factors:

(1) The economy of the county where the projected investment is to occur.

(2) The potential impact on the economy of Indiana.

(3) The incremental payroll attributable to the project.

(4) The capital investment attributable to the project.

(5) The amount the average wage paid by the applicant exceeds the average wage paid:

(A) within the county in which the project will be located, **in the case of an application submitted before January 1, 2006; or**

(B) to all employees working in the same NAICS industry sector in the county in which the project will be located, in the case of an application submitted after December 31, 2005.

(6) The costs to Indiana and the affected political subdivisions with respect to the project.

(7) The financial assistance that is otherwise provided by Indiana and the affected political subdivisions.

As appropriate, the board shall consider the factors in this section to determine the credit amount awarded to an applicant for a project to retain existing jobs in Indiana under section 15.5 of this chapter. In the case of an applicant under section 15.5 of this chapter, the board shall consider the magnitude of the cost differential between the projected costs for the applicant's project in the competing site outside Indiana and the projected costs for the applicant's project in Indiana.

SECTION 5. IC 6-3.1-13-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. (a) If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder or partner of a pass through entity is otherwise entitled under a separate agreement under this chapter. A pass through entity and a shareholder or partner of the pass through entity may not claim more than one (1) credit under the same agreement.

(c) ~~This~~ Subsection **(d)** applies:

(1) only to a pass through entity that is a limited liability company or a limited liability partnership owned wholly or in part by an electric cooperative incorporated under IC 8-1-13; **and**

(2) if, at the request of ~~a~~ **the** pass through entity, ~~if~~ the board finds that the amount of the average wage to be paid by the pass through entity will be at least double the average wage paid: ~~within~~

(A) in the county in which the project will be located, **in the case of an application submitted before January 1, 2006; or**

(B) to all employees working in the same NAICS industry sector in the county in which the project will be located, in the case of an application submitted after December 31, 2005.

(d) The board may determine that:

(1) ~~the~~ **a** credit shall be claimed by the pass through entity **described in subsection (c);** and

(2) if the credit exceeds the pass through entity's state income tax liability for the taxable year, the excess shall be refunded to the pass through entity.

If the board grants a refund directly to a pass through entity under this subsection, the pass through entity shall claim the refund on forms prescribed by the department of state revenue.

SECTION 6. IC 6-3.1-13-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) Subject to all other requirements of this chapter, the board may award a tax credit under this chapter to a nonprofit organization that is a high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5) if:

(1) the nonprofit organization:

(A) is a taxpayer (as defined in section 10 of this chapter); and

(B) meets all requirements of this chapter; and

(2) all of the following conditions are satisfied:

(A) The wages of at least seventy-five percent (75%) of the organization's total workforce in Indiana must be equal to at least two hundred percent (200%) of the average ~~county~~ wage **paid:**

(i) in the county in which the project will be located, as determined by the department of commerce, **in the case of an application submitted before January 1, 2005; or**

(ii) to all employees working in the same NAICS industry sector in the county ~~where~~ **in which** the project ~~for which the credit is granted~~ will be located, **in the case of an application submitted after December 31, 2005.**

(B) The organization must make an investment of at least fifty million dollars ($50,000,000) in capital assets.

(C) The affected political subdivision must provide substantial financial assistance to the project.

(D) The incremental payroll attributable to the project must be at least ten million dollars ($10,000,000) annually.

(E) The organization agrees to pay the ad valorem property taxes on the organization's real and personal property that would otherwise be exempt under IC 6-1.1-10.

(F) The organization does not receive any deductions from the assessed value of the organization's real and personal property under IC 6-1.1-12 or IC 6-1.1-12.1.

(G) The organization pays all of the organization's ad valorem property taxes to the taxing units in the taxing district in which the project is located.

(H) The project for which the credit is granted must be located in a county having a population of more than one hundred eighty thousand (180,000) but less than one hundred eighty-two thousand seven hundred ninety (182,790).

(b) Notwithstanding section 6(a) of this chapter, the board may award credits to an organization under subsection (a) if:

(1) the organization met all other conditions of this chapter at the time of the applicant's location or expansion decision;

(2) the applicant is in receipt of a letter from the department of commerce stating an intent to pursue a credit agreement; and

(3) the letter described in subdivision (2) is issued by the department of commerce not later than January 1, 2000.